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2012 APR 16 PM 4:43

V REISINGER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	P1300CR201001325
)	
Plaintiff,)	
)	
vs.)	RESPONSE TO STATE'S MOTION TO
)	COMPEL
STEVEN DEMOCKER,)	
)	
Defendant.)	
)	(Hon. Gary Donahoe)
_____)	

Defendant Steven DeMocker, by and through Counsel undersigned, hereby
Responds to the state's "Motion to Compel Production of Ex Parte and Sealed Documents." Per
the Arizona Court of Appeals Decision of the Defendant's Special Action, the Arizona Supreme
Court's Rules of Professional Conduct, and the reasons stated below, this Court should deny the
state's Motion. The state's Motion starts by implying that there is some question as to the
culpability of the Yavapai County Attorney's Office in this matter:

Yavapai County Attorney's Office ("YCAO") moves this Court for an order
requiring Defendant to produce the *ex parte* and sealed documents that he *claims*
were improperly viewed and/or printed by YCAO." (Motion to Compel, pg 1,
italics in original and added).

First, even a cursory review of the pleadings filed *by the state* concerning the ex parte and
sealed documents confirms that it is a fact that the state viewed, read, printed and shredded

documents in this case. In its May 27, 2011 Response to the Motion to Dismiss/Disqualify, the state absolutely settled this issue with the following confessions:

"The State concedes that its employees viewed and/or printed the subject documents as stated in the two reports from the Clerk of the Yavapai County Superior Court"

(Response, pg. 2).

"... the State accessed documents that it was not supposed to have access to"

(*Id.*, pg. 10).

Fields said that he did review ex parte documents in the DeMocker case ... Fields said he thought *he could recall reporting to Paupore to [sic] that some of the DeMocker records he reviewed dealt with ex parte information dealing with cost issues*, and Paupore replied he did not want to know any ex parte information, that any information of that type needed stay in the Civil Division.

("Yavapai County Attorney's Office Investigative Report," pg. 17, italics added).

"In its Response, the State admitted the employees identified in the defendant's request for disclosure viewed and or printed some of the subject documents."

(Response to Request for Disclosure, pg. 2).

On December 3, 2010, the state filed its "State's Motion for Change of Judge," which contained an affidavit of prosecutor Jeff Paupore. In the pertinent parts, Mr. Paupore avowed:

2. On November 24, 2010, with permission from the court, your affiant reviewed court files numbered 3 and 4 and an accompanying expando containing approximately 29 sealed manila envelopes.
3. In numerous locations in the court files, the Clerk, at the direction of Judge Lindberg, inserted pages titled PURGED on Rule 15.9 proceedings with instructions that no one could review the subject pleading without a prior order from the court.
4. Your affiant reviewed the State's files and could not locate any of the purged and sealed Rule 15.9 pleadings except as noted on Exhibits B through F attached.
5. *Your affiant reviewed the "OnBase" records* and could not locate any of the sealed Rule 15.9 applications or orders ...
7. Until the State sought and gained the Court's permission to review the Court's sealed files, *the State had no knowledge or notice that Defendant and/or his attorneys met with Judge Lindberg ex parte on numerous occasions.*

(Italics added).

Contrary to Mr. Paupore's avowals, the County Attorney did not first learn on November 24, 2010 of numerous ex parte motions and orders which were filed under seal. The state knew for a very long time about the numerous ex parte motions and orders which were filed under seal and which remain under seal, because the state illegally and intentionally viewed and printed ex parte pleadings using the OnBase system!

Thus, it is not an allegation that the state illegally accessed sealed ex parte documents 60 times over the period of 14 months, it is an inescapable fact.

The second claim in the state's April 4, 2012 Motion is that because the documents are at "the very heart of the evidentiary hearing," the state needs to view the documents. The state added that it "will not be able make the required disclosures if it is not provided a complete set of the documents at issue." *Id.*

However, this is not a completely candid statement, *because the state already has most of the documents they requested.* 23 face sheets of documents were attached to the Motion to Dismiss¹. The state possessed 14 sealed ex parte orders, which they attached to its Response to the Special Action. The state had earlier admitted they had a box containing 12 documents found in Joe Butner's office². Thus, there is no chance that new counsel has to "operate in the dark," or

¹ MR. YOUNG: Judge, this is Mr. Young. I don't agree with that premise. I think that there can be ways - - you, obviously, do have to get all of the documents that we're talking about and we'll talk about those documents in a moment at the appropriate time. *There are ways in which perhaps only the face sheets can be shown to the prosecution . . .* (March 9, 2012 Status Conference, pg. 6, lines 12 - 18, italics added).

² In its July 22, 2011 "Addendum to Response to Motion to Disqualify . . .," the state proclaimed: "A through search was conducted resulting in the discovery of 12 of the 16 Rule 15.9(b) Sealed Orders. The Sealed Orders were found in a "banker's box" that came from retired Deputy County Attorney Joseph Butner's YCAO office located in Camp Verde, AZ."

have an "inability to represent the YCAO," or not be able to get "to the heart of the matter." In addition, there are, as this Court pointed out, *reams* of pleadings in the case that thoroughly explain everything down to the minutiae concerning the ex parte documents. And, if that was not enough, there are transcripts of hearings in which the state had commented on the ex parte documents, the state's own affidavit(s), the state's Jarrell "Investigative" Report, and the pleadings regarding the special action. The state's Jarrell Report contains interviews -- by the state -- with 19 of the state's employees and/or agents, and other county MIS employees regarding the ex parte documents. (see: Jarrell Report Interview List, attached, Ex. A).

In addition, disclosure would violate standing court orders. Judge Lindberg was clear on his Orders:

THE COURT: My direction to the clerk would be that if Mr. Sears and Mr. Hammond have filed defendant's motion for determination of indigency and 15.9 appointments, that, that also is filed under seal, but that also is to be sealed by the clerk, *not to be opened except on further order of the court*, and is to be made available to the appellate court, if there is any conviction and if there is any appeal on the case. (July 10, 2009 Ex Parte Proceeding Pg. 2, italics added).

And:

THE COURT: Good. To that end, it is also not to be scanned. I don't know to what extent other agencies may have the ability to read what is in the scanning by the clerk's office, so if there was any confusion about my order, these orders or applications are not even to be scanned, either. (*Id.*).

And:

THE COURT: ... I believed, based on the motion that was presented July 6th, that a proper showing had been made concerning the need for confidentiality based upon the written motion. I had ordered that motion to be sealed by the clerk. (*Id.*, Pg. 1, lines 19 - 23).

July 21, 2011 Status Conference;

Just one day earlier, in a Hearing, Mr. Paupore had said this to say about the documents: MR. PAUPORE: No, Your Honor. I thought I saw every pleading I was supposed to see come across my desk. But I'm not going to swear that happened. Mr. Butner did talk about it. Neither us have any recollection of seeing the ex parte. There was one or two pleadings that we saw right in the very beginning. And then that was it. And I don't have any recollection, nor in my conversations with Joe Butner, does he have any recollections of seeing signed orders of 15.9 proceedings. (July 21, 2011 Status Conference, pg. 10, lines 15 - 25).

And:

THE COURT: I doubt that they were, but Rachel will probably help you double check on that. The record can reflect that I have two detention officers here. And to the extent, gentlemen, that we are discussing these in chambers, ex parte motions, *you are not to divulge what happens in here to the County Attorney's office, also. Although, that made common sense to you folks anyway. So not to divulge it to the County Attorney's office or the investigative branch of the Sheriff's office. (Id., pg. 3, lines 2 - 13, italics added).*

And:

On page 2 of Judge Mackey's March 16, 2011 Ruling, he held:

The investigation also has revealed that the Clerk of the Court's distribution stamp on the face of a number of the "sealed" Rule 15.9 Orders reflects distribution to the County Attorney's Office and Victim Services. Such distribution may have been contrary to the expectations of Judge Lindberg and the prior defense team. Therefore, the Court is concerned that not only have "sealed" documents been viewed through remote electronic access sites but that "sealed" documents have been distributed to the Yavapai County Attorney's Office and Victim Services when Judge Lindberg anticipated that such distribution would not occur.

Sealed, ex parte documents cannot be shared with the state -- even though the state has already illegally viewed, printed and shredded documents. Using the axiom that every parent tells their young children: "two wrongs do not make a right." A lawyer simply cannot disobey a court order. The Rules of Professional Conduct which apply are ER 3.4(c) and Rule 54(c), Ariz. Rules Supreme Court.

ER 3.4(c) clearly states that a lawyer shall not " knowingly disobey an obligation under the rules of a tribunal" Rule 54(c), "Grounds for discipline," states that the grounds for discipline includes a "Knowing violation of any rule or any order of the court"

Then there is the issue of the effectiveness of a protective order by this Court, one that would allow the new state's team to show documents to and discuss the forbidden fruit with one witness at a time. One glaring problem is that the new set of attorneys simply must discuss the contents of whatever is disclosed to them with their client, the YCAO, and worse, as they put it: "*any other witnesses necessary.*" (Motion to Compel, pg. 3, italics added).

ER 1.4., "Communication," states:

(a) A lawyer shall:

- 1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
- 2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- 3) keep the client reasonably informed about the status of the matter;
- 4) promptly comply with reasonable requests for information; and
- 5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) *A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.* (Italics added).

Arizona case law supports the Rule:

Attorney violated this rule where he not only failed to keep his client informed, as required by this rule, but did not explain the matter to his client so that decisions, vital to his client, could be intelligently made. In re Cardenas, 164 Ariz. 149, 151 (1990).

In considering the ethical considerations presented to this Court, the Defendant requests that this Court also consider the "Declaration" of Defense expert Karen Clark (attached, Ex. B).

Thus, the new attorneys for the state cannot possess the sealed ex parte materials, because there are existing Court Orders that they cannot possess the documents. Further, the new attorneys for the state cannot possess the sealed ex parte materials and fail to discuss them with their clients. It would be farce in any event, considering that the state *has already seen and/or possesses the materials*. Respectfully, the state's new need for the documents does not involve a lofty "we-cannot-operate-in-the-dark" justification. Indeed, any potential witness cannot help but be improperly influenced by the documents. There can be no way for the Defense to pierce the veil to see the witnesses' original and actual reaction to the documents and the issues presented. This would also violate the Defendant's Sixth Amendment Rights.

Further, the Court of Appeals did not contemplate this course of action:

In considering the issue of prejudice and whether and what remedy to grant petitioner, the superior court may consider and make findings with respect to the prosecution's motive in viewing and printing the confidential documents, any use the prosecution made of the documents, whether the prosecution's interference with petitioner's right to counsel was deliberate, whether the State "benefitted in any way" from the prosecution's unauthorized acts and, of course, "whether defendant was, in fact, prejudiced."

(Court of Appeals Decision Order, pg. 5).

This Court should consider the Court of Appeals decision the "law of the case," which means the determination has already been made that 1) the state should not have read nor manipulated the documents under any set of circumstances, and 2) the only remaining issue is the appropriate sanction(s) to impose for the state's actions. Whether or not the state "did it" is not in question, and thus there is no need for more disclosure of the sealed and ex parte documents.

Finally, the state suggested that the *sealed* documents were not a problem, because the state "was a party." If that is true, then the state should already have the sealed documents, or know the contents of them. However, two employees for the Yavapai County Sheriff -- who are not parties to action -- viewed sealed documents. And that *is* a problem.

Judge Darrow noted this problem:

Discussion takes place with regard to under seal minute entries. The Court clarifies that *there is not to be any further distribution of any information that comes out of a sealed proceeding*. The minute entries shall be distributed in an envelope and noted as under seal for all persons that received them. The Court states that the minute entry dated July 16, 2010, which was copied to the Sheriff's Office *shall not be distributed from the Sheriff's Office without further order of the Court*. (Minute Entry dated July 21, 2010, italics added).

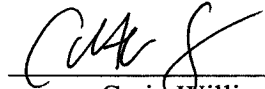
Conclusion

The state's Motion to Compel is an accentuation of the real catch-22 presented to this

Court. The disclosure of sealed ex parte materials to *anyone* who is not entitled to the documents repeats the violations of the Defendant's Due Process Rights. It does not matter how many layers of lawyers one puts between the original transgressors -- the Yavapai County Attorney's Office -- and subsequent readers of the documents. Even with a protective order, the materials will still be disclosed and discussed with all known witnesses, and worse, "any other witnesses necessary." (Motion to Compel, pg. 3). Any potential witness cannot help but be improperly influenced by the documents. There can be no way for the Defense to pierce the veil to see the witnesses' original and actual reaction to the documents and the issues presented. This would also violate the Defendant's Sixth Amendment Rights. The Jerrell Report is ample evidence of this dubious practice.

There is only one cure: disqualification.

RESPECTFULLY SUBMITTED this April 16, 2012.



Craig Williams
Attorney at Law

A copy of the foregoing delivered to:

Hon. Gary Donahoe, Division One, via e-mailed .pdf;

Jeff Paupore, Steve Young, Yavapai County Attorney's Office, via e-mailed .pdf, the filed copy is in courthouse box;

Russell Yurk (Jones, Skelton & Hochuli, P.L.C.), via e-mailed .pdf;

The Defendant;

Greg Parzych, via e-mailed .pdf

by:  _____

Jarrell Report Interview List:

1. Clerk of Superior Court - Sandra Markham, Renee Braner, Karen Wilkes, and Katherine Gibbs.
2. Seretha Hopper, YCAO Legal Secretary.
3. Barbara Genego, YCAO Legal Clerk.
4. Marie Higgins, YCAO, Victim Services, Victim Advocate.
5. John McDormett, YCSO Detective.
6. Pam Moreton, YCAO, Director, Victim Services.
7. Pam Spear, YCAO Legal Clerk.
8. Steve Page, RMIN, Forensic Computer Analyst.
9. Barb Paris, YCAO Legal Secretary.
10. Paula Glover, YCAO Legal Secretary.
11. Sean Paul, former YCAO Legal Secretary.
12. Pat Kavanaugh, YCAO Business Manager.
13. Yavapai County Management Information Systems - Robin Schmidt and Susan Murphy.
14. Rhonda Grubb, YACO Paralegal.
15. Jack Fields, YCAO Deputy County Attorney, Supervisor, Civil Division.
16. Kathy Durrer, YCAO Paralegal.
17. Deb Cowell, YCAO Paralegal.
18. Tony Camacho, Victim Services, Notifications Advocate.
19. Kurt Olsen, Victim Services, Technology Unit.

1 Ralph Adams, Bar No. 015599
2 Karen Clark, Bar No. 012665
3 ADAMS & CLARK, PC
4 520 East Portland Street, Suite 200
5 Phoenix, AZ 85004
6 (602) 258-3542
7 karen@adamsclark.com
8 Attorneys for Respondent

9
10 **SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **COUNTY OF YAVAPAI**

12 **STATE OF ARIZONA**

13 **Plaintiff**

14 **v.**

15 **STEVEN CARROLL DEMOCKER**

16 **Defendant**

17 **NO. P1300CR2-1--1325**

18 **DECLARATION OF KAREN CLARK**

19 **DECLARATION OF KAREN CLARK**

20 I, Karen Clark, declare as follows:

21 **PROFESSIONAL QUALIFICATIONS**

22 1. I have been practicing law in Arizona for 23 years and am currently a partner at Adams &
23 Clark, PC, a firm that focuses on legal ethics and the law of lawyering including state bar
24 discipline, character and fitness, reinstatements and fee disputes. I am also an expert witness on
25 ethics matters. In the course of my career I have both prosecuted and defended hundreds of
cases concerning legal ethics and professionalism issues. I served for eight years at the State Bar
of Arizona where I was a trial attorney prosecuting discipline cases and enforcing the ethical
rules. I was promoted to the State Bar's "Appellate Writing Supervisor", and in that capacity
reviewed and edited all briefs submitted to the (former) Disciplinary Commission and Supreme

1 Court of Arizona. I was then promoted to State Bar Ethics Counsel, providing lawyers advice
2 about the ethics rules and teaching numerous continuing legal education seminars on lawyer
3 ethics. Prior to my service at the State Bar of Arizona I practiced both civil and criminal law, as
4 both a prosecutor and criminal defense attorney. I continue to frequent lecture at continuing
5 legal education seminars on ethics throughout the state. I am an Adjunct Professor of Law at
6 Arizona State University, teaching Professional Responsibility. Attached hereto as Exhibit A is
7 a true and correct copy of my curriculum vitae, the contents thereof I affirm as accurate.

8 2. I am admitted to practice before all courts in Arizona (1989), the United States District
9 Court for the District of Arizona (1990) and to practice before all courts in Hawaii (2005;
10 currently inactive). I am a past President of the West Hawaii State Bar Association and past
11 member of Hawaii's Consumer Protection Committee. I am currently a member of the Arizona
12 Judicial Performance Review Commission. I am also a Master of the Thurgood Marshall Inn of
13 Court. My professional memberships with the State Bar of Arizona (past and present) include:
14 State Bar Fee Arbitration Committee Member (for which I serve as a chair, panelist and/or
15 arbitrator of fee disputes); Sole Practitioner and Small Firm Section Member and former
16 Executive Council Member; Professionalism Task Force Member (2003 – 2005); State Bar One
17 on One Mentoring Program Member. I am also a member of a national professional association
18 called the Association of Professional Responsibility Lawyers.

19 3. In regard to the issues involved in above-captioned case, involving a finding that the
20 Yavapai County Attorney's Office (YCAO) has violated Defendant's right to counsel, I was the
21 bar counsel responsible for the State Bar's prosecution of *In re Peasley*, 208 Ariz. 27, 90 P.3d
22 764 (Ariz. 2004). In that case, a deputy county attorney intentionally deceived the court and
23 presented false testimony of a detective who was the main state witness in order to secure
24 convictions in a series of trials involving three defendants, all of whom were sent to death row.
25 This case was intensely litigated for seven years, and the deputy county attorney was ultimately

1 disbarred by the Supreme Court. Since that time, I have become a frequent lecturer on
2 prosecutorial misconduct. I was also recently brought on by the Arizona Prosecuting Attorney's
3 Advisory Council to provide annual training to Arizona prosecutors on issues of prosecutor
4 ethics and how to avoid engaging in misconduct.

5 DUE DILIGENCE

6 4. In regard to this matter, I have had several conferences with counsel for Defendant, and
7 have reviewed documents related to this case as set forth in Exhibit B.

8 OPINIONS

9 5. Counsel for Defendant cannot ethically turn over to the State the *ex parte* and/or sealed
10 documents requested by YCAO in the Motion to Compel filed by its outside counsel, nor can
11 YCAO have any further access to these documents. Both of these actions would violate the
12 following court orders and court rules: (1) Judge Lindberg's court order dated July 6, 2009,
13 sealing these documents; (2) Judge Mackey's court order dated March 16, 2011, confirming that
14 the documents remain sealed; (3) the Arizona Rules of Professional Conduct and Rules of the
15 Supreme Court, which subject a lawyer to discipline for knowingly disobeying court orders. (See
16 Rule 42, Arizona Rules of the Supreme Court, Ethical Rule 3.4(c) and Rule 54(c), Arizona Rules
17 of the Supreme Court).

18 6. Disclosure of the documents requested in the Motion to Compel, and the State once again
19 gaining access to them would also be directly contrary to the Court of Appeals' Decision Order
20 dated March 6, 2012 – issued in this case, on this very issue. The Court of Appeals held that the
21 prosecution interfered with Defendant's relationship with his counsel by viewing and/or printing
22 the sealed and/or *ex parte* documents, and remanded the case to this Court for a hearing to
23 determine how or whether Defendant was thereby prejudiced. As such, YCAO once again
24 gaining access to these very same documents would only compound the interference with
25 Defendant's right to counsel which has already been found, and repeat the wrongful conduct

1 previously engaged in by the YCAO. *See* Ethical Rules 4.4(a), 8.4(d). Both the disclosure to
2 and viewing by YCAO of these documents would also violate the Court of Appeals decision, and
3 in this regard – once again – violate Ethical Rule 3.4(c) and Rule 54(c), Arizona Rules of the
4 Supreme Court.

5 7. Outside counsel for the State in his motion to Compel proposes that in the alternative,
6 these documents be turned over to him with an order that he not share them with his client, the
7 YCAO, but that he be allowed to share them with a former YCAO attorney as well as “any other
8 witnesses necessary” for YCAO to defend itself on the issue of sanction – presumably to include
9 numerous current and former employees of YCAO who are necessary witnesses on that issue.
10 Outside counsel’s proposal would violate several ethical rules. First, a lawyer cannot withhold
11 from a client documents and/or information received during the course of the representation. *See*
12 *Restatement (Third) of Law Governing Lawyers*, Section §46(3), and comment 3 thereto, which
13 states “a client is entitled to retrieve documents in possession of a lawyer relating to the
14 representation of the client. That right extends to documents placed in the lawyer’s possession as
15 well as documents produced by the lawyer”). *See also* Ethical Rules 1.2, 1.4 and 8.4(d). Second - if
16 YCAO employees - current or former - view these documents, their knowledge concerning same
17 is imputed to the entire YCAO, because the YCAO is to be treated as a single law firm for
18 purposes of this analysis. *See* Ethical Rule 1.0(c), which provides that government lawyers may
19 be treated as a firm depending on the particular ethical rule involved, as well as the facts of the
20 situation. In addition, *In re Andrew P. Thomas et al*, PDJ 2011-9002 (April 10, 2012) at page 74,
21 paragraph 108, recently held that for purposes of the conflict rules, “the [Maricopa County
22 Attorney’s Office] is a firm because of its structure – both the civil and criminal divisions report
23 to [the County Attorney]...”¹ The principal that this information will be imputed to the entire
24

25 ¹ Under the Rules of the Supreme Court, *In re Thomas* is a final decision, until such time as Mr.
Thomas appeals. *See* Rule 58(k), Rules of the Supreme Court. To date he has not done so.

1 YCAO applies whether the documents are again reviewed by either lawyers or non-lawyer
2 assistants at YCAO. *See* Ethical Rules 5.1 through 5.3; Ethical Rule 5.3, Comment 1. In the
3 instant case, where the Court of Appeals has already held that the State violated Defendant's
4 right to counsel by viewing and/or printing these documents, further access to them by YCAO
5 employees will result in knowledge of the information contained therein being imputed to the
6 entire YCAO – again compounding the State's previous interference with Defendant's right to
7 counsel, and again violating Ethical Rules 3.4(c), 4.4(a) , 8.4(d) and Rule 54(c), Arizona Rules
8 of the Supreme Court.

9
10 I declare under the penalty of perjury that the facts stated herein are true and correct.

11 Dated this 16th day of April, 2012.

12
13 
14 Karen Clark

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24 Even if the decision were overturned, the discussion of this issue at pages 74-75 provides an
25 instructive overview of existing Arizona caselaw, ethical rules and opinions supporting the
proposition that the YCAO will be treated as a single law firm in this case, and for purposes of
the pending Motion to Compel.

KAREN CLARK

Curriculum vitae

GENERAL DATA

Born August 6, 1963, Palo Alto, California

Married to Ralph Adams, Esq.

EDUCATION

Undergraduate – Arizona State University: *Bachelor of Arts (Honors)* 1986.

Professional – University of Arizona College of Law: *Juris Doctorate, May 1989.*

PROFESSIONAL

ADAMS & CLARK, PC (Partner: 2009 – Present) 520 E. Portland Street, Phoenix AZ 85004

I am a legal ethics attorney. My practice is focused on legal ethics and the law of lawyering, including lawyer discipline, character and fitness, reinstatements and fee disputes, and legal ethics expert witness work.

JUNG & VASSAR, P.C. (Of Counsel: 2008 – 2009) Kona, Hawaii

ADAMS & CLARK, LLLC (Partner: 2006 – 2008) Kona, Hawaii

STATE BAR OF ARIZONA (1997 – 2006) Phoenix, AZ

Ethics Counsel: (2004 – 2006)

Senior Bar Counsel: (2002 – 2004)

Appellate Writing Supervisor: (2002 – 2004)

Staff Bar Counsel: (1997 – 2002)

OFFICE OF THE PUBLIC DEFENDER (Deputy Public Defender: 1995 – 1997) Phoenix, AZ

LAW OFFICE OF GLENN M. DAVIS (Associate: 1994 – 1995)

ARIZONA ATTORNEY GENERAL'S OFFICE (Assistant Attorney General: 1990 – 1994)

Assistant Attorney General, Land and Natural Resources Section (1992 – 1994)

Assistant Attorney General, Licensing and Enforcement Section (1990 – 1992)

Judicial Clerk to Judge Jefferson Lankford, Arizona Court of Appeals (1989 – 1990)

Legal Intern, United States Senate Judiciary Committee, Washington DC (1989)

Judiciary Committee Staff of Arizona's Senior Senator

Admitted to practice before all courts in Arizona (1989)

United States District Court for the District of Arizona (1990)

Admitted to practice before all courts in Hawaii (2005: currently inactive)

ACTIVITIES (Professional)

Arizona Prosecuting Attorneys' Advisory Council

Program Instructor on legal ethics and prosecutorial misconduct (June 2011 – Present)

Commission on Judicial Performance Review

Member (January 2012 – Present)

One on One Mentoring Program

Mentor (2010 – Present)

Judicial Performance Review

Conference Team Member (Spring 2010)

Thurgood Marshall Inn of Court

Member (2009 – Present)

Member (1996 – 2002)

State Bar of Arizona

Sole Practitioner Small Firm Section Member

Treasurer and Board Member (2009 – 2010)

West Hawaii Bar Association

President (December 2006 – December 2007)

Hawaii State Bar Association Consumer Protection Committee

Committee Member (Summer 2006 – January 2009)

PROFESSIONAL RESPONSIBILITY ACTIVITIES

Arizona State University, Sandra Day O'Connor College of Law

Law Professor (adjunct), Professional Responsibility (2011 – Present)

State Bar of Arizona

Fee Arbitration Committee Member (2010 – Present)

Association of Professional Responsibility Lawyers

Member (2008 – Present)

State Bar of Arizona

Professionalism Task Force (2003 – 2005)

ACTIVITIES (Non-Professional)

University of Arizona College of Law

Elected to student council, American Bar Association, Law Student Division

President, Arizona Civil Liberties Union, College of Law Subchapter

Arizona State University Barrett Honors College

Alumni Association President (2002 – 2004)

Alumni Board Member (2000 – 2004)

Assisted in Developing and Supervised Pre-Law Mentoring Program (2002 – 2004)

Wrote and defended Honors Thesis

Alpha Lambda Delta, Sophos and Pi Sigma Alpha Honoraries

Arizona State University Barrett Honors College, Cont'd
Elected President, Honors Program Student Council
President, Model United Nations
Arizona Center for Law in the Public Interest
Legal Research Aide (1988 – 1989)
Arizona State University Political Science Department
Academic Intern (Summer 1995 – Spring 1986)

PUBLICATIONS

Author, "Five Fun Facts About Flat Fees," *Attorney at Law Magazine* (June 2012)

Author, "A Flip of the Coin? How DOES our Lawyer Discipline System Decide what Sanction to Impose?" *Attorney at Law Magazine* (January 2012)

Author, "In the News: Supreme Court Establishes New Attorney Regulations Advisory Committee," (September 2011)

Author, "When the State Bar Calls," *Attorney at Law Magazine* (July 2010)

PRESENTATIONS

Speaker, "Misconduct in the Courtroom: What Every Criminal Lawyer Needs to Know," Arizona Prosecuting Attorneys' Advisory Council, Criminal Year Seminar: Tucson, Phoenix and Mesa, Arizona (March, 2012)

Speaker, "Misconduct in the Courtroom: What Every Criminal Lawyer Needs to Know," Arizona Prosecuting Attorneys' Advisory Council, Criminal Year Seminar Phoenix, Arizona (March 23, 2012)

Speaker, "Misconduct in the Courtroom: What Every Criminal Lawyer Needs to Know," Arizona Prosecuting Attorneys' Advisory Council, Criminal Year Seminar Tucson, Arizona (March 16, 2012)

Speaker, "Avoiding Bar Complaints for Family Law Practitioners," Maricopa County Bar Association (March 9, 2012)

Speaker, "Avoiding Ethics Trouble in the New Disciplinary System," Pinal County Bar Association (November 16, 2011)

Speaker, "Evidence of Dishonesty: The Ethical Implications of Overstating Your Case," Arizona Forensic Sciences Academy (October 28, 2011)

Speaker, "Ethics for Public Defenders," Office of Legal Defender (October 20, 2011)

Speaker, "Avoiding Ethics Trouble in the New Disciplinary System," Solo and Small Firm Section (October 7, 2011)

Speaker, "Good Lawyers, Bad Trouble: Criminal Law Misconduct in the New Disciplinary System," Pima County Public Defender (September 29, 2011)

Speaker, "The Inn's 'You're Out!' Ethics Trouble in the New Disciplinary System," Thurgood Marshall Inn of Court (September 27, 2011)

Speaker, "Avoiding Ethics Trouble in the New Disciplinary System," Horace Rumpole Inn of Court (September 14, 2011)

Speaker, "Responding to the State Bar's New Discipline System," Arizona Attorneys for Criminal Justice (June 30, 2011)

Speaker, "Good Lawyers, Bad Trouble: The 10 Tested Techniques to Help You Avoid Trouble," CLE West (June 29, 2011)

Speaker, "Bar Counsel Calling: Responding to the State Bar in the New Discipline System," Arizona Public Defender Association (June 24, 2011)

Speaker, "Then the Lawyer did WHAT? True Ethical Tales from the Criminal Law Trenches," Arizona Public Defender Association Conference (June 24, 2011)

Speaker, "True Tales from the Trenches: 10 Techniques for Avoiding Ethics and Legal Malpractice Liability," Maricopa County Bar Association (June 21, 2011)

Speaker, "Prosecutorial Misconduct in Arizona: Cases, New Discipline System and More," Arizona Prosecuting Attorney's Advisory Council (June 17, 2011)

Speaker, "Changing Times, Changing Practices: Ethical and Malpractice Considerations when Practicing in a New Area of Law," State Bar of Arizona, Young Lawyer's Division, Solo and Small Firm Section (June 15, 2011)

Speaker, "Avoiding Ethics and Malpractice Liability in Probate and Estate Practice," Maricopa County Bar Association (June 9, 2011)

Speaker, "True Tales from the Trenches: 10 Things You Need to Know About Ethics and Legal Malpractice Liability," Pima County Bar Association (June 7, 2011)

Speaker, "Lawyer Liability and Arizona's Medicinal Marijuana Act: An Ethics Defense Perspective," Arizona Center for Disability Law (May 6, 2011)

Speaker, "The New World of Lawyer Discipline: Practical Considerations in Responding to Bar Counsel," Young Lawyer's Division (March 4, 2011)

Speaker, "Lawyer Liability and Arizona's Medicinal Marijuana Act: An Ethics Defense Perspective," State Bar of Arizona (March 3, 2011)

Speaker, "Ethics Issues Related to Child Support," Arizona Family Support Council (November 5, 2010)

Speaker, "Bar Counsel Calling?" Solo and Small Firm Section (November 5, 2010)

Speaker, "Then the Lawyer did WHAT? True Ethical Tales from the Criminal Law Trenches," Arizona Public Defender Association Conference (June 10, 2010)

Speaker, "No One Said There'd be Math...Trust Accounting for Dummies," Pima County Bar Association (June 3, 2010)

Speaker, "Everything You Know About Lawyer Discipline is About to Change," Thurgood Marshall Inn of Court (April 28, 2010)

Speaker, "Everything You Know About Lawyer Discipline is About to Change," Maricopa County Bar Association (April 23, 2010)

Speaker, "Everything You Know About Lawyer Discipline is About to Change," Young Lawyer's Division (April 16, 2010)

Speaker, "Starting Up When Things are Down," Solo and Small Firm Section (March 23, 2010)

Speaker, "Ethics Considerations," State Bar of Arizona (March 18, 2010)

Speaker, "Re-Engineering Attorney Discipline," Presentation to State Bar Board of Governors (December 18, 2009)

Speaker, "Trust Accounts," Arizona Public Defender Association (September 25, 2009)

Speaker, "Trust Accounts," In House CLE for Frazer, Ryan, Goldberg & Arnold, LLP (September 22, 2009)

Speaker, "Trust Accounts," Arizona Trial Lawyers Association (September 18, 2009)

Speaker, "Trust Accounts," Office of Public Defender Services (August 21, 2009)

Speaker, "Money and Trust Accounts: Do You Know the New Rules?" State Bar of Arizona (August 20, 2009)

Speaker, "Now It's Your Turn: Hands-On Trust Account Experience," Bar Convention CLE (June 24, 2009)

Speaker, "Trust Accounts," Arizona Attorneys for Criminal Justice (June 19, 2009)

Speaker, "Random Trust Audits: Are You Ready? Is Your Firm Compliant?" CLE West (June 19, 2009)

Speaker, "We Can Work It Out: How to Avoid Bar Complaints in Indigent Representation," Arizona Public Defender Association (June 18, 2009)

Speaker, "It's Comin' Round the Bend...How to Derail a Prospective Bar Complaint," Arizona Public Defender Association (June 18, 2009)

*Additional speaking engagement information (2002 -- 2009) available upon request.

***State v. Democker*, NO. P1300CR2-1--1325**

List of Documents
Reviewed By Karen Clark

1. State's Motion for Change of Judge filed December 3, 2010
2. Defendant's Objection to 10.2 filed December 30, 2010.
3. Judge Mackey Ruling filed March 16, 2011.
4. Defendant's Motion to Dismiss/Disqualify filed May 2, 2011.
5. State's Response to Motion to Dismiss/Disqualify with Exhibit A and Exhibit B filed May 27, 2011.
6. Defendant's Expedited Request for Disclosure filed June 3, 2011.
7. Transcript of June 6, 2011 hearing.
8. State's Response to Defendant's Request for Disclosure filed June 8, 2011.
9. Defendant's Reply to State's Response re: Request for Disclosure filed June 13, 2011.
10. State's Disclosure re: June 15, 2011 Court order filed June 24, 2011.
11. Defendant's Reply to Motion to Dismiss/Disqualify filed July 1, 2011.
12. Transcript of July 21, 2011 hearing.
13. State's Addendum to Response to Motion to Dismiss/Disqualify filed July 22, 2011.
15. Defendant's Response to Addendum filed July 28, 2011.
16. Defendant's Petition for Special Action with Exhibits 1-15 filed with the Court of Appeals on February 2, 2012.
17. State's Response to Special Action with Exhibits filed February 10, 2012.
18. Defendant's Reply re: Special Action filed February 16, 2012.
19. Court of Appeal Decision Order filed March 6, 2012.
20. Transcript of March 9, 2012 hearing.
21. Memo from Sheila Polk to the Board of Supervisors dated March 14, 2012.
22. Judge Donahoe's Minute Entry re: discovery/disclosure dated March 19, 2012.
23. State's Motion to Compel Production of *Ex Parte* and Sealed documents dated April 3, 2012.
24. States' Motion for Order Allowing Management Systems to Provide Information Regarding Documents in OnBase System dated April 12, 2012